

# EXHIBIT D

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF C O O K )

4 IN THE CIRCUIT COURT OF COOK COUNTY  
5 COUNTY DEPARTMENT-CRIMINAL DIVISION

6 THE PEOPLE OF THE )  
7 STATE OF ILLINOIS )

8 -vs- )

9 THOMAS SIERRA )

Case No. 95-18602

Charge: Murder

10 MOTIONS

11 REPORT OF PROCEEDINGS of the hearing before the  
12 Honorable STUART E. PALMER, on the 20th day of  
13 August, 1996.

14 APPEARANCES:

15 HONORABLE JACK O'MALLEY,  
16 State's Attorney of Cook County, by  
17 MS. NEERA WALSH and  
18 MR. KEVIN BYRNE,  
19 Assistant State's Attorneys,  
20 for the People of the State of Illinois;

21 MS. RITA A. FRY,  
22 Public Defender of Cook County, by  
23 MR. BERNARD SARLEY,  
24 Assistant Public Defender,  
for the Defendant.

Jamie F. Brown, CSR  
Official Court Reporter  
2650 South California Avenue  
Chicago, Illinois 60608

1           MR. SARLEY: That's my copy and it's not  
2 signed. That's the only one I have. If you want to  
3 look at it that's fine, Judge. Or have it.

4           THE COURT: All right. You may proceed.

5           MR. SARLEY: Thank you, your Honor.

6                     Your Honor, my first witness is Alberto  
7 Rodriguez.

8           THE COURT: All right.

9           MR. SARLEY: There would be a motion to exclude  
10 witnesses.

11          MS. WALSH: We will join in that motion.

12          THE COURT: Those motions will be allowed. Go  
13 ahead.

14                                     (Witness sworn.)

15                     ROBERTO RODRIGUEZ,  
16 called as a witness on behalf of the  
17 Petitioner/Defendant, being first duly sworn, was  
18 examined and testified as follows:

19                     DIRECT EXAMINATION

20                     By MR. SARLEY:

21          Q.     Sir, would you please state your name and  
22 spell your last name please?

23          A.     Alberto Rodriguez, R-o-d-r-i-g-u-e-z.

24          Q.     And, Mr. Rodriguez, preliminarily I want

1 to direct your attention to May 23d of 1995 at  
2 approximately 10:30 p.m. Were you present when a  
3 person by the name of Noel Andujar was shot?

4 A. Yes.

5 Q. And would that occur in the vicinity of 26  
6 hundred north Kedzie in Chicago?

7 A. Kedzie and Chicago?

8 Q. No. Did that -- did that occur around the  
9 area of 26 hundred North Kedzie?

10 A. Yes.

11 Q. In Chicago?

12 A. Yes.

13 Q. And you actually saw him get shot,  
14 correct?

15 A. Yes.

16 Q. Now, I'm going to direct your attention to  
17 about two days later, that is May 25th of 1995.

18 Did you have occasion to see some police  
19 detectives on that day?

20 A. Yes.

21 Q. Okay. And where was it that you saw those  
22 police detectives?

23 A. My house.

24 Q. Okay. Do you know about what time of day

1 it was that you saw those detectives at your house?

2 A. I don't know the date, but it was --

3 Q. The time?

4 A. Around the evening, around seven o'clock.

5 Q. And it was two days after the shooting?

6 A. Around that time, yes.

7 Q. Okay. Now, when the police officers came  
8 over to your house did you -- was it a surprise to  
9 you or did you know they were coming?

10 A. It was a surprise.

11 Q. And when they -- when the police officers  
12 came over, how many officers were there?

13 A. Three.

14 Q. And do you know whether they were all  
15 detectives or not?

16 A. They were all detectives.

17 Q. Okay. How were they dressed?

18 A. Plainclothes.

19 Q. Do you know the names of those officers or  
20 those detectives?

21 A. No.

22 Q. Would you recognize them if you saw them  
23 though?

24 A. Yes.

1           Q.     Now, when those three officers came over  
2 to your house tell us what happened?

3           A.     They asked me if I can identify the  
4 shooter of what happened on the day that my buddy  
5 got shot.

6           Q.     And when you say the day your buddy got  
7 shot, that's -- the person you're talking about is  
8 Noel Andujar?

9           A.     Yes.

10          Q.     That's the shooting that you were present  
11 for two days earlier?

12          A.     Yes.

13          Q.     Okay. After they asked you that question,  
14 what did they do or say?

15          A.     They asked me if I could look at the  
16 pictures.

17          Q.     Now, when you say the pictures, what are  
18 you referring to? What did they show you or give  
19 you?

20          A.     Some photographs of some suspects.

21          Q.     Do you know how many photographs that you  
22 were given?

23          A.     Around five or six. Five or six.

24          MR. SARLEY: May I approach the witness, your

1 Honor?

2 THE COURT: Yes.

3 MR. SARLEY: Q. I'm going to show you six  
4 photographs which I'm considering marked as  
5 Petitioner's Exhibit Number, group number one for  
6 identification. And I'm going to -- I've handed you  
7 six photographs.

8 Would you first look at those photographs  
9 and see if you -- do you recognize what I'm giving  
10 you, what I've given you? Go ahead. You can  
11 answer.

12 A. These are pictures of some suspects.

13 Q. Can you tell us whether these are the  
14 pictures that the detective or detectives showed you  
15 on May 25 at your house?

16 A. Yes.

17 Q. Yes? Okay.

18 Now, by the way, was one of the officers,  
19 the one that was speaking to you or were they all  
20 speaking to you during this thing that happened at  
21 your house?

22 A. Just basically one officer.

23 Q. One officer. Do you remember his name?

24 A. No.

1           Q.     Okay. So when the officer came in -- and  
2 prior to handing you the picture what did he say to  
3 you?

4           A.     See if I can identify the guy that did the  
5 shooting.

6           Q.     Did he say anything, anything to you about  
7 whether or not they thought they had the person in  
8 the photos?

9           A.     No.

10          Q.     Specifically what did he say?

11          A.     He just said if I could identify the guy.

12          Q.     Okay. Specifically did he ask you -- or  
13 excuse me. Strike that. Withdraw that question.

14                   Specifically did the officer say to you  
15 that they thought they had the person in the  
16 photos?

17          MR. BYRNE:  Objection.  It's been asked and  
18 answered.

19          THE COURT:  Sustained.

20          MR. SARLEY:  Well, Judge -- well, Judge, I  
21 don't think that specific question has been asked or  
22 answered.  I asked him specifically if anything was  
23 said and I'm asking him a different question.

24          THE COURT:  You asked him that question.  He



1 said no.

2 MR. SARLEY: Q. Well, Mr. Rodriguez, do you  
3 recall speaking to me a few minutes ago in the  
4 hallway?

5 A. Yes.

6 Q. About this presentation of the  
7 photographs?

8 A. Yes.

9 Q. Okay. And that was just a few minutes  
10 earlier outside of court, correct?

11 A. Yes.

12 Q. And I asked you questions about what the  
13 officers did and said to you prior to showing you  
14 these photographs?

15 A. Yes.

16 Q. Correct? Didn't you tell me just a few  
17 minutes ago that prior to showing the pictures the  
18 officer -- the officer that showed you the pictures  
19 told you that he thought he had the person?

20 MR. BYRNE: Objection. Now, Judge, he's  
21 injecting himself into this as a witness.

22 THE COURT: Overruled.

23 THE WITNESS: Yeah. He asked me -- he said  
24 they probably got the guy. But he didn't say that

1 he does. He said he's probably the guy in these  
2 pictures.

3 MR. SARLEY: Q. So the officer did tell you  
4 that probably the guy that did the shooting was in  
5 those pictures?

6 A. Yes.

7 Q. And after he said that to you, what did he  
8 do? Gave you the pictures?

9 A. Yes.

10 Q. And what did you do?

11 A. I looked through them.

12 Q. Okay. And how long did it take for you to  
13 look through those pictures?

14 A. Five, ten minutes.

15 Q. Okay. After those five or ten minutes that  
16 you looked through those pictures did you select one  
17 of the photographs?

18 A. Yes.

19 MR. SARLEY: Now, if I may approach the witness  
20 again, your Honor.

21 THE COURT: Sure.

22 MR. SARLEY: Q. Do you see the photograph in  
23 that group of six photographs that's been marked as  
24 Petitioner's Exhibit Number one, do you see the one

1     that you selected on that day?

2             A.     Yes.

3             Q.     Would you please take that one picture out  
4     of that group of six?

5                     Your Honor, for the record he has pulled  
6     one of the six photographs out of this group and --

7             THE COURT:   Well, let's give that photograph a  
8     number. One A?

9             MR. SARLEY:   We will make it one A.

10            THE COURT:   All right.

11            MR. SARLEY:   Your Honor, there would be a  
12     stipulation also that the photograph that he  
13     selected is a photograph of Thomas Sierra.

14            THE COURT:   All right.   Thank you.

15            MR. SARLEY:   Q.   Now, after you selected that  
16     photograph, what happened after that?

17            A.     They said they were going to see what they  
18     can do about it and basically that's it.   They just  
19     left.

20            Q.     They left. And all three of the officers  
21     left your house?

22            A.     Yes.

23            Q.     Okay. Now, sir, directing your attention  
24     to -- strike that.

1                   Sometime after you picked that one  
2 photograph out of those six, did you have occasion  
3 to view a lineup?

4           A.     Yes.

5           Q.     Okay. And do you remember when that lineup  
6 was, in relationship to when you looked at the  
7 pictures, how much later? Do you remember?

8           A.     A couple of days later.

9           Q.     Could it have been on May 30, five days  
10 later?

11          A.     Yes.

12          Q.     Okay. And where did that lineup take  
13 place?

14          A.     I believe in Grand and Central.

15          Q.     Grand and Central, at a police station?

16          A.     Yes.

17          Q.     And I'm going to take these away from you  
18 now.

19                   I'm going to show you, sir, Petitioner's  
20 Exhibit Number two for identification. And it's a  
21 photograph. Would you take a look at that  
22 photograph? And first of all tell the Court what it  
23 is I have shown you?

24          A.     A picture of a lineup.

1           Q.     Okay. And how many people are in that  
2 lineup?

3           A.     Six.

4           Q.     Can you tell us whether that -- those are  
5 the six people -- strike that.

6                     Can you tell us whether that's the lineup  
7 that you viewed on May 30th of 1995 at Grand and  
8 Central as you just indicated?

9           A.     I don't know if this is the same exact  
10 pictures, but it's something like that.

11          Q.     It looks like it but you're not sure?

12          A.     Yes.

13          Q.     During the course of that lineup did you  
14 select, pick one of the people out of the lineup you  
15 viewed, did you make an identification at that time  
16 on May 30?

17          A.     Yes.

18          Q.     Okay. And was that the same -- did you  
19 identify the same person whose photograph you picked  
20 out on May 25 when the officers came to your house?

21          A.     Yes.

22          Q.     Now, Mr. Rodriguez, directing your  
23 attention to -- again to the date of the incident  
24 when your friend got shot. You had -- did you have

1 an opportunity to see or look at the person that  
2 shot your friend?

3 MR. BYRNE: Objection.

4 MS. WALSH: Objection.

5 MR. BYRNE: We're getting into the actual  
6 incident itself, Judge. It's beyond the scope of  
7 the suggestiveness.

8 MR. SARLEY: Your Honor, if an initial  
9 suggestiveness or some initial suggestiveness is  
10 shown, according to the case law you are entitled to  
11 examine the witness on the issues of the  
12 identification, portions of the identification in  
13 order to determine whether the identification was  
14 based on the suggestiveness or based on the actual  
15 confrontation or the incident. I mean, that becomes  
16 a question of fact that your Honor has to determine.  
17 And in support of that proposition I would cite  
18 People versus Robinson, 46 Ill 2d 229.

19 Basically for that proposition I believe  
20 I'm entitled at this point, once an initial  
21 suggestiveness is shown, to examine him on the  
22 issues of the identification so that your Honor can  
23 make a determination.

24 MR. BYRNE: Judge, there has been no showing of

1 any unduly suggestive behavior on the part of the  
2 police. If there were and the Court indicated there  
3 were then we could go to an independent basis. But  
4 right now what he's trying to do is cross examine  
5 this witness about what he was able to observe at  
6 the time of the event, and that's improper.

7 THE COURT: Objection sustained.

8 MR. SARLEY: Your Honor, can I ask you to look  
9 at this Robinson case then? And I will give a copy  
10 to counsel also.

11 (Recess taken.)

12 THE COURT: Well, all right. Anyone want to  
13 say anything about this Robinson case?

14 MR. BYRNE: No, Judge.

15 MR. SARLEY: Judge --

16 THE COURT: Go ahead.

17 MR. SARLEY: Just to analogize the situations  
18 here. With regard to the facts of this case as we've  
19 heard so far, this gentleman has testified that he  
20 was shown a group of six photographs. And he was  
21 told by officers that we probably have the guy in  
22 those six photographs.

23 THE COURT: It depends on which time you ask  
24 him.

1 MR. SARLEY: I'm paraphrasing.

2 THE COURT: All right. Here's my ruling. If I  
3 make a finding that the conduct of the police was  
4 such that either the photo array or the lineup was  
5 unduly suggestive, then I will allow a hearing as to  
6 the independent basis of whether or not the witness  
7 had an opportunity to observe the offender at the  
8 time of the crime, and not before. All right? And I  
9 don't think we're at that juncture yet.

10 MR. SARLEY: So --

11 THE COURT: So the objection is sustained.

12 MR. SARLEY: So I can't ask him any questions  
13 at all about the incident in terms of the  
14 identification?

15 THE COURT: The objection to the question that  
16 you posed is sustained.

17 MR. SARLEY: Q. Okay. Then let me ask you  
18 this, Mr. Rodriguez.

19 The person that you saw shoot your friend  
20 on May 23d of 1995, had you ever seen that person  
21 before?

22 MR. BYRNE: Objection.

23 THE COURT: Sustained.

24 MR. SARLEY: Q. During the incident where your



1 friend was shot, how long after -- how long did you  
2 have an opportunity to observe the person that shot  
3 your friend?

4 MR. BYRNE: Objection.

5 THE COURT: Sustained.

6 MR. SARLEY: May I have a moment please, your  
7 Honor?

8 (Recess taken.)

9 MR. SARLEY: Q. Sir, after the -- after the  
10 incident where your friend was shot, did you have  
11 occasion to speak on that same day to any police  
12 officers about what you had seen?

13 MR. BYRNE: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: Yes.

16 MR. SARLEY: Q. And how long after the  
17 shooting did you speak to those -- that police  
18 officer or those police officers?

19 A. After everything happened, some police  
20 officers and homicide came. They put me in the back  
21 of the car with homicide and he asked me questions  
22 and I answered them.

23 Q. You said in a car?

24 A. Yeah.

1           THE COURT:   Sir, is there a reason why you're  
2   whispering?   I can't hear you.

3           THE WITNESS:   No, sir.

4           THE COURT:   Speak up please.

5           THE WITNESS:   Homicide asked me some questions.

6           THE COURT:   All right.

7           THE WITNESS:   And I answered them.

8           MR. SARLEY:   Q. Okay.   You said that  
9   conversation happened in a car?

10          A.    Yes.

11          Q.    Was it your car or another car?

12          A.    It was a detective car.

13          Q.    Where did the conversation take place?

14          A.    Right on Kedzie and Fullerton.

15          Q.    And how many officers did you speak to?  
16   One or more than one?

17          A.    One.

18          Q.    Do you remember that officer's name?

19          A.    No.

20          Q.    Do you know if it was a man or a woman?

21          A.    A man.

22          Q.    Was it a white, hispanic or black officer?

23          A.    A white officer.

24          Q.    And that officer asked you questions about

1 what you had observed?

2 A. Yes.

3 Q. And you answered those questions?

4 A. Yes.

5 Q. How long -- approximately how long after  
6 the shooting did the conversation happen?

7 A. Fifteen minutes.

8 Q. And during that conversation did you give  
9 the officer a description of the person who did the  
10 shooting?

11 MR. BYRNE: Objection.

12 THE COURT: What is your objection?

13 MR. BYRNE: Again it's beyond the scope of the  
14 motion which alleges an unduly suggestive lineup.  
15 Now we are getting into an earlier description  
16 that's given. It has nothing to do with whether the  
17 lineup was suggestive or not.

18 THE COURT: Mr. Sarley?

19 MR. SARLEY: Your Honor, one of the criteria on  
20 whether the lineup is suggestive is whether the  
21 description of the person picked out of a lineup,  
22 how that is or how it squares with any earlier  
23 description that the witness may have given to an  
24 officer. And that's the basis for my question.

1           THE COURT: Well, I think that that's an  
2 appropriate line of questioning. I mean, if a person  
3 witnesses an event, gives a description to the  
4 police, for example says that the shooter had short  
5 hair, and then they do a showup and they put  
6 everybody in the showup with long hair except for  
7 one guy, then they've used the description to make  
8 something suggestive. So I mean, the description  
9 does go to whether or not the procedure was correct.

10                   The objection is overruled.

11           MR. SARLEY: Q. Did you -- do you recall if  
12 you gave a description?

13           A. Yes.

14           Q. Okay. And what -- what was that  
15 description?

16           A. An hispanic guy.

17           Q. Okay. Was there any further description  
18 besides an hispanic guy?

19           A. No.

20           Q. No?

21                   And how long was that conversation that  
22 you had with that officer in that car fifteen  
23 minutes after the shooting? How long did the whole  
24 conversation take?

1           A.     Around twenty minutes, half an hour.

2           Q.     And during that conversation did he ask  
3 you -- in other words did that officer ask you  
4 whether you could give any other -- any further  
5 description other than just an hispanic guy?

6           A.     He asked me who else was in the car and  
7 what kind of car it was and --

8           Q.     Okay. But my question is regarding the  
9 description of the person that did the shooting, did  
10 the officer ask you whether you could describe him  
11 any further other than just an hispanic guy?

12          A.     Yes.

13          Q.     And you were not able to do that?

14          A.     No.

15          MR. SARLEY: Your Honor, based on your ruling I  
16 have no other questions of this witness on this  
17 issue. But I reserve the right to question him again  
18 on the independent basis.

19          THE COURT: Very well.

20          MR. SARLEY: Depending on your Honor's ruling.  
21 So I have no further questions at this time.

22                   CROSS EXAMINATION

23                   By MS. WALSH:

24          Q.     Mr. Rodriguez?

1           A.     Yes.

2           Q.     When the police officers came to your  
3 house on May 23d of 1995, did they tell you who to  
4 pick out in that packet of the six pictures that  
5 counsel showed you?

6           A.     No.

7           Q.     Did they threaten you or promise you  
8 anything in exchange for picking out any one of  
9 those persons?

10          A.     No.

11          Q.     On May 30 when you went to view the  
12 lineup, 1995, did the officers -- did anybody or any  
13 officers tell you who to pick out of the lineup?

14          A.     No.

15          Q.     Did they threaten you or promise you or  
16 make any promises to you for picking out anyone in  
17 that lineup?

18          A.     No.

19          Q.     Counsel showed you a picture of the  
20 lineup.

21                 Your Honor, I believe there will be a  
22 stipulation that the witness did, in fact, pick out  
23 the defendant in that lineup photograph.

24          THE COURT: All right.

1           MS. WALSH: Which is person number two. One  
2 moment.

3           I have nothing further.

4           THE COURT: Anything else, Mr. Sarley?

5           MR. SARLEY: Just briefly, your Honor.

6           THE COURT: Yes.

7                           REDIRECT EXAMINATION

8                           BY MR. SARLEY:

9           Q.     So the -- during -- when the six  
10 photographs were shown to you at your house, before  
11 you were asked to look at the photographs, you  
12 weren't told which picture to pick out, correct?

13          A.     Correct.

14          Q.     Okay. But you were told by one of the  
15 officers that they probably got the guy?

16          A.     Yes.

17          MR. SARLEY: No other questions.

18          MS. WALSH: I have nothing further, your Honor.

19          THE COURT: All right. You're excused, sir.

20                           (Witness excused.)

21          MR. SARLEY: Your Honor, I have no further  
22 witnesses to call on the motion and the petitioner  
23 rests.

24          THE COURT: All right.